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IN THE

Supreme Court of the United States

October Term, 1971.

No. 71-689.

COMMONWEALTH OF PENNSYLVANIA, et al.,
Petitioners,

v.

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR., and WILLARD WIRTZ, TRUSTEES OF THE PROPERTY OF THE PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit.

BRIEF FOR RESPONDENTS IN OPPOSITION.

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BRIEF FOR RESPONDENTS IN OPPOSITION.

OPINIONS BELOW.

The opinions of the United States District Court for the Eastern District of Pennsylvania and the United States Court of Appeals for the Third Circuit are adequately cited and set forth in the Petition and in the Appendices thereto.

JURISDICTION.

The jurisdictional requisites are adequately set forth in the Petition.

COUNTERSTATEMENT OF THE QUESTIONS PRESENTED.

1. Whether a Reorganization Court has the power to centralize litigation, which, if proliferated in other forums, would impede the progress of reorganization under the Bankruptcy Act.

2. Whether the Penn Central Transportation Company Reorganization Court properly exercised its discretion by enjoining litigation in other forums against the Respondents regarding discontinuance of passenger service pursuant to the Rail Passenger Service Act of 1970.

STATUTE INVOLVED.

The statute involved is the Rail Passenger Service Act of 1970, 45 U. S. C. § 501 *et seq.*, 84 Stat. 1327, P. L. 91-518, enacted October 30, 1970. This Statute is set forth in full in Appendix C to the Petition.

COUNTERSTATEMENT OF THE CASE.

After entering reorganization under Bankruptcy Act Section 77, 11 U. S. C. § 205 *et seq.*, the Penn Central Transportation Company (Penn Central) was authorized by the Interstate Commerce Commission (I. C. C.) to discontinue certain passenger trains between Buffalo, New York and Chicago, Illinois. The instant petitioners sought review of the I. C. C. order in the Western District of Pennsylvania before a statutory three-judge court, which granted interlocutory injunctive relief. The Trustees of the property of Penn Central (the Trustees) appealed, to the United States Supreme Court, the decision of the statutory court insofar as that decision extended to certain train service in Canada.

The Rail Passenger Service Act of 1970 (the Amtrak Statute) was enacted into law on October 30, 1970. This Statute authorized the creation of the National Rail Passenger Corporation (initially identified as Railpax and now known at Amtrak) which would provide intercity rail passenger service. The Statute barred the discontinuance of intercity passenger trains until at least May 1, 1971. The Statute specified the sole means for discontinuance of such trains, notwithstanding the pendency of any proceedings before any federal or state courts. Accordingly, on February 22, 1971, the Trustees' pending appeal from the statutory court's interlocutory injunction was dismissed on grounds of mootness:

> "The judgment is vacated and the case is remanded to the United States District Court for the Western District of Pennsylvania with instructions to vacate the interlocutory injunction appealed from because the injunction, together with the underlying cause, has become moot." *Baker v. Pennsylvania,* 401 U. S. 902 (1971).

The instant petitioners, apparently apprehensive that the Trustees would, in violation of the Amtrak Statute, discontinue the train service involved in the statutory court proceedings, filed a new civil action in the United States District Court for the Western District of Pennsylvania again seeking injunctive relief against discontinuance of the same train service. On March 31, 1971, the Trustees petitioned the Honorable John P. Fullam, Judge of the United States District Court for the Eastern District of Pennsylvania (the Penn Central Transportation Company Reorganization Court) for authority to enter into a contract with Amtrak. Shortly thereafter, the Trustees petitioned the Reorganization Court for an order directing the instant petitioners to show cause why their action in the Western District of Pennsylvania should not be restrained, unless the Reorganization Court granted leave to proceed with such suit. Following hearing on the Trustees' latter petition, Judge Fullam determined that litigation, such as that being pursued by the instant petitioners in the Western District of Pennsylvania, would clearly hamper the Penn Central Reorganization efforts. Accordingly, on April 16, 1971, Judge Fullam entered Order No. 232 which enjoined the instant petitioners from proceeding with said litigation and which also required leave of the Reorganization Court prior to the institution or maintenance of litigation involving Penn Central and affecting the continuance or discontinuance of passenger trains covered by the Amtrak Statute. For the protection of the public, Order No. 232 also required the Trustees to provide additional notice prior to discontinuance of intercity passenger service pursuant to the Amtrak Statute.[1]

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1. Order No. 232 does not restrain litigation which might be brought by departments and agencies of the Federal government. This exception is consistent with the Amtrak Statute, which authorizes only the United States Attorney General to bring suits to enjoin

The Court of Appeals heard this matter together with appeals taken by railway labor organizations from the Reorganization Court's Order No. 242, which denied leave to join the Trustees in litigation in the District of Columbia regarding labor protective provisions under the Amtrak Statute. The Court of Appeals affirmed both Orders Nos. 232 and 242. The Court concluded that the Reorganization Court had the power to enjoin litigation which would remove from the Reorganization Court any question which it had a duty to decide in connection with the Reorganization, or which would hamper the Reorganization Court in any way in exercising the power imposed upon it. The Court of Appeals specifically concluded that Order No. 232 was a proper exercise of the Reorganization Court's discretion.

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violations of the Statute. See discussion *infra* at pp. 13-18. Order No. 232 is reproduced in full on p. 9a of Appendix A to the Petition. In accordance with Order No. 232, certain of the instant petitioners have filed, in the Eastern District of Pennsylvania, three civil actions regarding the Trustees' discontinuance of trains pursuant to the Amtrak Statute. These cases have been assigned to Judge Fullam.

REASONS FOR DENYING THE WRIT.

I. This Case Was Correctly Decided by the Courts Below.

A. In Order to Effectuate Its Jurisdiction Under the Bankruptcy Act, the Reorganization Court Has the Clear Power to Enjoin the Prosecution of Litigation, in Other Forums, Tending to Impede the Reorganization Process.

Upon the filing of the reorganization petition, all property interests of the Debtor passed into the custody and control of the Reorganization Court and became subject to the authority of that Court. Mandated by the Bankruptcy Act to effectuate the reorganization of the Debtor, the Court is empowered to effectuate its jurisdiction by enjoining acts which would clearly frustrate the reorganization. This injunctive power further stems from the general equity powers of a reorganization court to protect the property under its aegis. It is clear that this injunctive power authorizes the Reorganization Court to restrain the prosecution of suits, in other forums, which would tend to hinder the progress of the reorganization.

This power was recognized in *Ex parte Baldwin*, 291 U. S. 610 (1934). In this case, railroad reorganization trustees sought a writ of mandamus to compel the transfer of a suit instituted in a state court, seeking injunctive and monetary relief regarding the trustees' abandonment of rail service. The Supreme Court denied the extraordinary remedy of mandamus in view of the availability of the more common injunctive remedy, available to the railroad reorganization court, to restrain the state court suit if it interfered with the jurisdiction of the reorganization court. In reaching this conclusion, the Court stated:

> "All property in the possession of a bankrupt of which he claims the ownership passes, upon the filing of a

> petition in bankruptcy, into the custody of the court of bankruptcy. To protect its jurisdiction from interference, that court may issue an injunction. The power is not peculiar to bankruptcy or to the federal courts. It is an application of the general principle that, where a court of competent jurisdiction has, through its officers, taken property into its possession, the property is thereby withdrawn from the jurisdiction of other courts. Having possession, the court may not only issue all writs necessary to protect its possession from physical interference, but is entitled to determine all questions respecting the same." 291 U. S. at 615.

Pertinent provisions of the Bankruptcy Act specifically contemplate the bankruptcy court's enjoining of litigation. Bankruptcy Act Section 2(a)(15), 11 U. S. C. § 11(a)(15) empowers a court of bankruptcy to:

> "Make such orders, issue such process, and enter such judgments, in addition to those specifically provided for, as may be necessary for the enforcement of the provisions of this Act: Provided, however, That an injunction to restrain a court may be issued by the judge only."

Bankruptcy Act Section 77(j), 11 U. S. C. § 205(j), expressly authorizes the Reorganization Court to stay suits and to enjoin the initiation of litigation against the Trustees. This injunctive power is qualified only in the case, not here applicable, of suits for damages caused by the operation of trains or other means of transportation. Bankruptcy Act Section 77(j) provides in appropriate part:

> "In addition to the provisions of section 11 of this Act for the staying of pending suits against the debtor, the judge may enjoin or stay the commencement or

> continuation of suits against the debtor until after final decree; and may, upon notice and for cause shown, enjoin or stay the commencement or continuance of any judicial proceeding to enforce any lien upon the estate until after final decree: Provided, That suits or claims for damages caused by the operation of trains, busses, or other means of transportation may be filed and prosecuted to judgment in any court of competent jurisdiction and any order staying the prosecution of any such cause of action or appeal shall be vacated."

Section 77(j) thus further justifies the Reorganization Court's entry of a general stay of the prosecution of litigation against the Trustees in other forums. Order No. 1, entered by the Reorganization Court on June 21, 1970, contains such a restraint and injunction of the commencement or continuation of any legal proceedings against the Trustees, with the exception of suits for damages caused by the operation of trains.

The broad injunctive power of the reorganization court to restrain litigation in other forums has been repeatedly recognized by this Court and by the Circuit Courts. Such injunctive power is impelled by the need to centralize the entire administration of a debtor's estate in a single reorganization court. The exercise of this power, within the sound discretion of the reorganization judge, serves to protect the express jurisdiction granted the reorganization court over the debtor's property and to prevent any hinderance of the reorganization of the debtor. See, e.g., *Duggan v. Sansberry*, 327 U. S. 499, 511 (1946); *In re New York, New Haven and Hartford R. R. Co.*, 447 F. 2d 428, 430 (2 Cir. 1971); *In re Imperial "400" National, Inc.*, 429 F. 2d 671, 677 (3 Cir. 1970); *Diners Club, Inc. v. Bumb*, 421 F. 2d 396, 398 (9 Cir. 1970); *First National Bank in Houston,*

Texas v. Lake, 199 F. 2d 524, 528 (4 Cir. 1952), cert. denied 344 U. S. 914; *Shearman v. Missouri-Pacific R. R. Co.*, 250 F. 2d 191 (8 Cir. 1957). See also *Steelman v. All Continent Corp.*, 301 U. S. 278 (1937) (straight bankruptcy).

B. Order No. 232 Was a Proper Exercise of the Penn Centra. Transportation Company Reorganization Court's Discretionary Power to Enjoin Actual and Threatened Litigation Against the Trustees in Other Forums.

By their March 31, 1971 petition concerning entry into Amtrak, the Trustees had placed before the Court an essential aspect of the reorganization. Under the Amtrak Statute, this critical question had to be decided on a very narrow timetable. If there was to be a contract with Amtrak, it had to be executed prior to May 1, 1971. Failing a contract, the debtor's estate would be crippled by maintenance of all intercity passenger service until 1975. Execution of such a contract, and the Trustees' assumption of the substantial financial obligations under such contract, necessitated the prompt centralized determination of whether the Trustees would be authorized to discontinue passenger train service in accordance with the contract and with the Amtrak Statute. Litigation against the Trustees in other forums would have imposed an insurmountable impediment to the Reorganization Court's and the Trustees' resolution of the crucial passenger service aspect of the Penn Central reorganization. Thus, Order No. 232 was a necessary and proper exercise of the Reorganization Court's discretionary power to restrain suits, in other forums, which would impede the reorganization.

In the Opinion in support of Order No. 232, Judge Fullam acknowledged that, prior to enactment of the Amtrak Statute, the type and volume of litigation arising

from train discontinuances normally would not seriously affect the Reorganization Proceedings. However, the Reorganization Court recognized, and the Court of Appeals confirmed, the detrimental effect on the Reorganization Proceedings of profuse litigation, arising under the Amtrak Statute, which could enmesh the Trustees in other courts:

> "It is a matter of common knowledge that very many interested persons and governmental entities and agencies question the adequacy of intercity rail passenger service proposed to be supplied by Railpax. It is not inconceivable that, if they were free to do so, large numbers of such persons, entities and groups might seek to litigate particular issues in a wide variety of forums. This would clearly hamper reorganization efforts, not only because of the burden of the litigation itself, but because of the prospect of inconsistent results. It is apparent, therefore, that, at least for the present, this Court should retain control over litigation involving the impact of the National Rail Passenger Service Act of 1970 upon the Debtor." See *In re Penn Central Transportation Company*, 446 F. 2d 1109, 1113 (3 Cir. 1971).

In view of the importance of the Reorganization Court's reaching a decision on the Trustees' participation in Amtrak, the Reorganization Court's entry of Order No. 232 was a proper exercise of its discretionary power to restrain the prosecution of distracting litigation in other forums. Order No. 232 was in accord with a fundamental policy underlying reorganizations, namely the centralization in the reorganization court of matters essential to effective administration of the debtor's estate and its ultimate reorganization.

With regard to the petitioners' suit in the Western District of Pennsylvania, specifically enjoined by Order No.

232, it is clear that the underlying cause of action is now doubly moot. As discussed *supra* at p. 3, this Court declared such a cause of action moot following passage of the Amtrak Statute. In addition, to the extent that the petitioners' suit sought to prevent the possible violation of the Amtrak Statute by the Trustees, the purpose of the suit has been mooted by the Trustees' compliance with the Statute. The Trustees continued operation of the trains in question until May 1, 1971, at which time the obligation to perform such services was transferred to Amtrak. In accordance with its statutory obligations, Amtrak assumed the operation of certain of these trains and discontinued the operation of the others.

Despite the mootness of their litigation in the Western District of Pennsylvania, the petitioners argue that the Reorganization Court had no jurisdiction to enter Order No. 232 in view of the alleged applicability of state law to discontinuance of intercity passenger train service. This argument is untenable due to the specific preemption, by the Amtrak Statute, of state law previously applicable to the discontinuance of passenger service. The Statute provides:

> "Section 802. *Effect on pending proceedings.* Upon enactment of this Act, no railroad may discontinue any intercity rail passenger service whatsoever other than in accordance with the provisions of this Act, notwithstanding the provisions of any other Act, the laws or constitution of any State, or the decision or order of, or the pendency of any proceeding before, any Federal or State court, agency or authority."

In view of such complete preemption of state laws and proceedings by the Statute, the petitioners' reliance on *Palmer v. Massachusetts*, 308 U. S. 79 (1939) is clearly misplaced.

In that case, the Court was presented with no such national legislation which superceded existing state laws and proceedings regarding discontinuance of passenger service. Such national legislation was enacted in response to cases such as *Palmer v. Massachusetts.* See *City of Chicago v. United States,* 396 U. S. 162, 165-166 (1969).[2] Petitioners' reliance on the *Palmer* case overlooks 31 years of history of the decline of railroads in this country, a history culminating in the Amtrak Statute which has made intercity passenger service operation a completely new entity, a national rail system under the aegis of a federally created and funded corporation.

Although the petitioners' suit in the Western District of Pennsylvania is moot, the justification for Order No. 232's injunction of litigation in other forums continues with even greater force. Three civil actions, regarding discontinuance of passenger service in Pennsylvania and New York State pursuant to the Amtrak Statute, have already

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2. 49 U. S. C. § 13(a), a 1958 amendment to the Interstate Commerce Act, initiated the federal preemption of state laws formerly applicable to train discontinuances. 49 U. S. C. § 13(a) was enacted to provide a single federal standard to govern train discontinuances, whether interstate or intrastate. The purpose of Section 13(a) was to supercede the prior confused and time-consuming procedures (such as confronted the Court in *Palmer v. Massachusetts*) under which the States supervised the discontinuance of passenger train service. See *City of Chicago v. United States, supra; Southern Railway Co. v. North Carolina,* 376 U. S. 93, 100-103 (1964). Thus, even prior to enactment of the Amtrak Statute, Congress and the Courts recognized that efforts to discontinue lightly-patronized passenger trains were unduly hobbled by protracted administrative and judicial proceedings. In enacting the Amtrak Statute, Congress clearly recognized the need for prompt, unfettered action to reduce rationally the past system and number of intercity passenger trains. See Senate Report No. 91-765, 91st Cong., 2nd Sess. (1970), p. 2; 1970 *U. S. Code Cong. and Adm. News,* 91st Cong., 2nd Sess., pp. 4735-4737. Thus, petitioners' intimation that Congress and the Courts have not intended to restrict the scope of *Palmer v. Massachusetts* is ingenuous at best.

been brought against the Trustees. This litigation has been confined to the United States District Court for the Eastern District of Pennsylvania by virtue of Order No. 232. The bringing of similar litigation in the Western District of Pennsylvania and in the Pennsylvania Commonwealth Court (see Petition pp. 5-6) demonstrates the possibilities of proliferation of such litigation. The instant petitioners, who seek to escape the effect of Order No. 232, alone number fourteen governmental entities representing six states. An additional petitioner has participated in a variety of litigation, in various forums, regarding discontinuance of trains pursuant to the Amtrak Statute. If these petitioners, and other persons similarly placed, were freed from the provisions of Order No. 232, it is entirely possible that the Trustees would be subjected to profuse litigation in a variety of forums. As discussed *infra* at pp. 13-18, litigation such as that brought by the instant petitioners is precluded by the Amtrak Statute. Nevertheless, the bringing of such litigation would impose additional burdens on the Trustees' limited legal staff and financial resources. The prosecution of such litigation in a variety of forums also raises the prospect of inconsistent results which could require repeated resolution by this Court. These factors would clearly hinder the Reorganization Proceedings by decentralizing the initial determination of issues bearing on the crucial passenger service aspect of the Penn Central Reorganization.

II. Order No. 232 Does Not Prejudice the Petitioners Since the Amtrak Statute Precludes Their Bringing of Litigation to Prevent Violations of the Statute.

Litigation such as that brought by the instant petitioners seeks to establish the existence of, and to enjoin, violations of the Amtrak Statute. However, under the

Statute, only the United States Attorney General is authorized to bring litigation such as that sought to be prosecuted by parties such as the petitioners. Since the Amtrak Statute precludes the petitioners from bringing such litigation, Order No. 232 does not prejudice the interests of the petitioners.

Section 307 of the Amtrak Statute limits the jurisdiction of the District Courts to impose sanctions for violations of the Statute. The Statute provides in part as follows:

> "Sec. 307. Sanctions.
>
> (a) If the Corporation or any railroad engages in or adheres to any action, practice, or policy inconsistent with the policies and purposes of this Act, obstructs or interferes with any activities authorized by this Act, refuses, fails or neglects to discharge its duties and responsibilities under this Act, or threatens any such violation, obstruction, interference, refusal, failure, or neglect, the district court of the United States for any district in which the Corporation or other person resides or may be found shall have jurisdiction, except as otherwise prohibited by law, *upon petition of the Attorney General of the United States or, in a case involving a labor agreement, upon petition of any employee affected thereby, including duly authorized employee representatives,* to grant such equitable relief as may be necessary or appropriate to prevent or terminate any violation, conduct, or threat. [Emphasis added]
>
> (b) Nothing contained in this section shall be construed as relieving any person of any punishment, liability, or sanction which may be imposed otherwise than under this Act."

The cases interpreting this provision confirm the plain meaning of its language—that the Amtrak Statute precludes all categories of suits for purported violations of the Statute, except for suits brought by the United States Attorney General or, with respect to a labor agreement controversy, by employees or their representatives.[3] In *Congress of Railway Unions v. Burlington Northern, Inc.*, 326 F. Supp. 68 (D. D. C. 1971), state governmental agencies, associations of railway labor unions, and a railroad passenger association sought to enjoin the discontinuance of certain passenger trains not included in the basic intercity system designated under the Statute for operation by Amtrak. In discussing Amtrak Statute Section 307(a), the Court stated:

> "As this section clearly states, the jurisdiction of the courts to apply sanctions for violations of the Act attaches only upon the petition of the Attorney General of the United States. The sole exception is suits by employees and their representatives in cases involving labor agreements. Since the plaintiffs are not parties to the contracts between the railroads and Amtrak, and more importantly since the unions are not directly concerned with the notice procedures, a labor agreement is not involved and no rights peculiarly pertaining to employees are asserted. Accordingly, the only person with standing to seek the relief

3. The Trustees have asserted this position in a pending motion to dismiss, for failure to state a claim upon which relief can be granted, Amtrak train discontinuance suits brought in the United States District Court for the Eastern District of Pennsylvania pursuant to Order No. 232. Similar motions have been filed in litigation in other forums regarding discontinuance of service by various railroads in accordance with the Amtrak Statute. These motions are currently under advisement at the District Court level and, in the case of litigation in the District of Columbia discussed immediately *infra*, at the Circuit Court level.

> demanded in this action under Section 307 is the Attorney General. He has chosen not to act . . . .
>
> . . . the Court is constrained to look to the language of the Act as it passed. Clearly in a non-labor agreement dispute only the Attorney General can bring suit for violation of the Act. The plaintiffs do not have standing and this suit must be dismissed." 326 F. Supp. at 78-79.

The Court reached the same conclusion in the companion case of *Potomac Passengers Association v. Chesapeake and Ohio Railway Company,* in which a railway passenger organization sought to enjoin the discontinuance of various passenger trains, in part on the ground that certain of the trains were commuter trains exempt from immediate discontinuance under the Amtrak statute. See 326 F. Supp. 68, 79-80. A similar result was reached in the unreported case of *National Association of Railroad Passengers v. Central of Georgia Railway Company,* (D. D. C. 1971, Civil Action No. 831-71).

Thus, under the Amtrak Statute, actions may be brought only by three proper plaintiffs—the United States Attorney General or, in labor dispute cases not here present, by an affected employee or his representative. If the Amtrak Statute were interpreted to authorize *any* aggrieved person to apply for relief for violation of the Statute, the statutory language authorizing suits by employees and their representatives would be superfluous. However, in enacting the Amtrak Statute, Congress rejected such an expansive invitation to litigation. Instead, Congress chose to limit private rights of action under the Statute to the sole area of labor dispute cases, thus averting the proliferation of litigation under the Amtrak Statute. This was emphasized in the following terms in *Congress of Railway Unions v. Burlington Northern, Inc.,* 326 F. Supp. 68 (D. D. C. 1971):

"... [T]he legislative history of Section 307 ... discloses a Congressional intent to provide an exclusive remedy for violations of the Act and not to grant standing to *any* aggrieved person to seek sanctions. Two of the plaintiffs in this action, Congress of Railway Unions, and Railway Labor Executives' Association, urged during the Congressional consideration of this Act the adoption of an amendment which would have permitted *any* person aggrieved to bring suit against Amtrak or the railroads for violations of the Act. Testimony pointed out that:

> 'As the bill now reads, only the Attorney General, except in cases involving a labor agreement, could bring such actions. Moreover, the present language of section 307 makes only the Corporation subject to suit for violations of the act and our amendment would include any railroad which might not discharge all of its obligations under the law.'

The Committee adopted the proposal to make the railroads subject to suit but explicitly rejected the request that standing to seek judicial enforcement of the Act be broadened to include *any* person aggrieved." 326 F. Supp. at 79.

The specification by Congress of who may bring suit to enforce a statute normally precludes others from doing so. Where, as here, Congress has designated a particular remedy for violation of a statute, additional remedies are normally excluded. Thus, the limited enumeration of proper plaintiffs in the Amtrak Statute should be recognized by the Court and should not be expanded beyond the limits set by Congress. These principles have been applied in a line of cases involving a variety of federal statutes.

See, e.g., *Calhoon v. Harvey*, 379 U. S. 134 (1964); *B. F. Goodrich Company v. Northwest Industries, Inc.*, 429 F. 2d 1349 (3 Cir. 1970), cert. denied 400 U. S. 822; *Powell v. Washington Post Company*, 267 F. 2d 651 (D. C. Cir. 1959), cert. denied 360 U. S. 930. See also *Fleischman v. Maier Brewing Co.*, 386 U. S. 714 (1967); *Montana-Dakota Utilities Co. v. Northwestern Public Service Co.*, 341 U. S. 246 (1951); and *Switchman's Union of North America v. National Mediation Board*, 320 U. S. 297 (1943).

Since Congress has specifically and unambiguously designated who may bring suits to prevent violations of the Amtrak Statute, the Statute is not amenable to creation of a private right of action. Private rights of action on occasion have been implied under statutes which do not provide explicit methods for enforcement. Cf. *J. I. Case v. Borak*, 377 U. S. 426 (1964); *Allen v. State Board of Elections*, 393 U. S. 544 (1969). However, in the face of the express remedies designated by Congress in the Amtrak Statute, such additional remedies should be excluded.

The instant petitioners are not litigating matters involving labor agreements—the sole area amenable to private actions under the Amtrak Statute. Since the petitioners' various suits are precluded by the Statute, the petitioners are not prejudiced by the restraints contained in Order No. 232. Therefore, it can not be established that, as to the instant petitioners, the entry of Order No. 232 was an abuse of discretion by the Penn Central Transportation Company Reorganization Court.

CONCLUSION.

For the foregoing reasons, this cause should not be reviewed by the Court, and the Petition for a writ of certiorari should be denied.

Respectfully submitted,

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Dated: December 1971